

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DONALD RAY SHIPP,

Petitioner,

v.

Case No. 2:05-CV-129

Hon. Richard Alan Enslen

JERRY HOFBAUER, warden,

Respondent.

ORDER

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This matter is before the Court on Petitioner Donald Ray Shipp's Appeal of United States Magistrate Judge Timothy P. Greeley's October 7, 2005 Order, which denied Petitioner's Motion to Correct Improper Extendtion [sic] of Time to Respondent in Order to File Answer Under 28 U.S.C.S. § 2243. Judge Greeley extended Respondent's deadline to file a response to 180 days. In his motion to correct, Petitioner argued that the Court is without authority to extend Respondent's deadline to file a responsive pleading beyond the twenty days specified in 28 U.S.C. § 2243. Petitioner reiterates that argument on appeal. The Court reviews Judge Greeley's October 7, 2005 Order for clear error and to assure accordance of law. FED. R. CIV. P. 72(a); W.D. MICH. LCIVR 72.3(a).

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides that if a section 2254 "petition is not dismissed, the judge must order respondent to file an answer, motion, or other response within a fixed time, or take other action the judge may order." The 1976 Advisory Committee Notes to Rule 4 also make clear that:

In the event an answer is ordered under Rule 4, the Court is accorded greater flexibility than under § 2243 in determining within what time period an answer must be made In view of the widespread state of work overload in prosecutors'

offices . . ., additional time is granted in some jurisdictions as a matter of course. Rule 4, which contains no fixed time requirement, gives the court the discretion to take into account various factors such as the respondent's workload and the availability of transcripts before determining a time within which an answer must be made.

Given Rule 4's discretionary grant, Judge Greeley was clearly permitted to extend Respondent's deadline to respond to 180 days.

THEREFORE, IT IS HEREBY ORDERED that Petitioner Donald Ray Shipp's Appeal of United States Magistrate Judge Timothy P. Greeley's October 7, 2005 Order (Dkt. No. 19) is **DENIED**.

DATED in Kalamazoo, MI:
December 7, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE